IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 489 OF 2006

Dilawar Mohammed Hussain Naisargi, Age : 30 years, Occ.: Barber R/o : Suvarna Laxmi Hsg. Society, Sant Tukaram Nagar, Pimpri, Pune.	]]]]]]	Appellant (Ori. accused No. 1)
Vs.		
The State of Maharashtra (Through Chatushrungi Police Station)	]]]	Respondent (Ori. Complainant)

WITH
CRIMINAL APPEAL NO. 490 OF 2006

Mahesh Devidas Pol, Age : 29 years, R/o : Ganaraj Residency, Block No. 34, Sector 16, Chikhali, Pradhikaran, Pune	]]]]]]	Appellant (Ori. accused no. 2)
Vs.		
The State of Maharashtra (Through Chatushrungi Police Station.	]]]	Respondent (Ori. Complainant)

WITH
CRIMINAL APPEAL NO. 491 OF 2006

Mahendra Rajendra Thakur Age : 34 years Occ.: Driving R/o : Sharada Niwas, Beside Chitale Shop, Mangal Nagar, Wakad Road, Pune	]]]]]]]	Appellant (Ori.accused no. 3)
Vs.		

The State of Maharashtra] Respondent
(Through Chatushrungi Police] (Ori.
Station)] Complainant)

Mr. Abhyankar Apte for the Appellants
Mr. D.P. Adsule, APP for the Respondent.

CORAM : J.H. BHATIA, J.
DATE : 7TH JUNE, 2007

ORAL JUDDGMENT

1) All these three appeals may be disposed of by common judgment as the said appeals have been filed by three accused persons who were convicted in Sessions Case No. 427 of 2005 by the learned Ad-hoc Additional Sessions Judge, Pune.

2) The appellants, who were accused no. 1 to 3, were convicted for the offence punishable under Section 489-C r/w 34 of Indian Penal Code and sentenced to undergo R.I. for three years and to pay fine of Rs.100/- , in default to pay fine to undergo further R.I. for one month. They have challenged the judgment and order of conviction and sentence by filing this three appeals.

3) The prosecution case is that on 1/3/2005 at about noon time, API Shaikh of Chatushrungi Police Station and staff members were called by Senior

Police Inspector Mr. Pawar and Mr. Pawar informed API Shaikh and other staff members that as per information received from some informant three persons, aged between of 30 to 35 years, blackish in colour, wearing jean pants and white and reddish colour shirts, were possessing the fake currency notes of Rs.50/- denomination and were moving in Parihar Chowk area of Aundh, Pune. After getting this information, API Shaikh along with staff members rushed to Parihar Chowk at about 14.15 hrs. While keeping the watch in that area, they noticed three persons in front of Parihar Sweet Mart and they appeared to be in disturbed state of mind. The description of suspected persons as per the information tallied with the personality of those three persons. Therefore, API Shaikh approached those three persons and asked about the reasons for their presence in that area. After that he disclosed his identity and also his intention to take their personal search. He called two panch witnesses and informed them about the information. In presence of two panch witnesses, personal search of those three persons were taken. They are accused no. 1 Dilawar, accused no. 2 Mahesh and accused no. 3 Mahendra. During the personal search, 17 fake currency notes of denomination of Rs.50/- were found in possession of accused no. 1

Dilawar, 16 fake currency notes of denomination of Rs.50/- were found with accused no. 2 Mahesh and 15 similar notes were found in possession of accused no. 3 Mahendra. On one of such counterfeit notes, water was sprinkled by API Shaikh and it was noted that the colour of the said note had become faint. Thereafter each of the notes seized from all the three accused was signed by API Shaikh and panch witnesses. Then the notes seized from accused nos. 1, 2 and 3 respectively were kept in separate envelopes which was duly sealed and seized. About this seizure panchanama was prepared at the spot. After that the muddemal property and accused were taken to Police Station.

4) On the report lodged by API Shaikh, crime No. 97/2005 came to be registered under Section 489-A and 489-C Indian Penal Code. During the investigation, it was revealed that accused no. 4 Javed and 5 Guru were also involved in the circulation of currency notes and it appeared that accused no.5 Guru, who was a Bihari, was the main source of circulation of currency notes. However, accused nos. 4 and 5 were absconding. The currency notes seized from the accused persons were referred to India Security Press, Nasik with a covering letter by PSI, Chaudhari and report was

received. It was confirmed by the report that all these notes were counterfeit. After investigation, charge-sheet came to be filed.

5) As stated above, accused nos. 4 and 5 were absconding. Only accused nos. 1 to 3 were put to trial and were charged for the offences under Sections 489(A) and 489(C) r/w 34 of Indian Penal Code. The accused pleaded not guilty. According to them, they are falsely implicated in this case.

6) On behalf of prosecution, in all six witnesses were examined. After hearing the prosecution evidence and the arguments of both the sides, the learned trial Court convicted all the three accused persons under Section 489(C) r/w 34 of Indian Penal Code and sentenced them as stated earlier. However, all the three accused persons were acquitted of the offence under Section 489(A) Indian Penal Code.

7) Heard Mr. Apte, learned counsel for the accused- appellants and Mr. Adsule, learned APP.

8) Learned counsel for the parties have taken me through the prosecution evidence, documents and the impugned judgment. Mr. Apte vehemently

contended that the prosecution witnesses were interested witnesses and were not reliable, they had not followed the procedure laid down by law and that the prosecution evidence suffers from several discrepancies and therefore the conviction cannot be sustained. On the other hand, Mr. Adsule strongly supported the impugned judgment of conviction and sentence.

9) About recovery of counterfeit notes of denomination of Rs.50/- each from accused no 1 to 3, prosecution heavily relied upon evidence of PW 5 API Shaikh Shakil Isaq, who was posted at Chatushrungi Police Station at the relevant time. PW 2 Ashok Shankar Bhosale who was member of the raiding party and P.W. 3 Pandurang Asraji Ghuge, who was the panch witness. P.W. 5, API Shaikh deposed that on 1/3/2005 when he was present at Chatushrungi Police Station, Sr. Police Inspector called himself, P.W. 2 Head Constable Bhosale and other staff members in his Office and informed them that as per information three persons were trying to circulate fake currency notes of denomination of Rs.50/- at Parihar Chowk of Aundh at Pune. Senior Police Inspector directed API Shaikh and another staff members to rush Parihar Chowk for action. According to him, for sometime they watched the

situation and they noticed three persons in disturbed state of mind, watching here and there in front of Parihar Sweet Mart. The Police party proceeded towards them. When they tried to go away, they were caught. Accused nos. 1 to 3 were identified by him as the same persons. API Shaikh explained his identify as well as suspicion about them. Then he called two panch witnesses and in presence of panch witnesses, he took personal search of all the three persons. First of all personal search of accused no. 2 Mahesh was taken. After him accused no. 3 Mahendra was searched and finally search of accused no. 1 Dilawar was taken. During the personal search of Mahesh, 15 fake currency notes of denomination of Rs.50/- were found in the pocket of his pant. Similarly 16 fake currency notes of denomination of Rs.50/- were found in the pocket of shirt of accused no.3 Mahendra and 17 fake currency notes of denomination of Rs.50/- were found in the pocket of pant of accused no. 1 Dilawar. All these notes started from serial nos. QBC-8023. During the inspection, he found that some of the notes had similar numbers. He seized these notes. The notes seized from each of accused were separately kept in envelopes which were duly closed, sealed and signed. Each note was also signed by himself and

the panch witnesses. On the envelopes, labels bearing signatures of himself and panchas were affixed. The packets were sealed with sealing wax. About the whole of the procedure panchanama Exh. 25 was drawn. He further deposed that before sealing the notes, he had put water on one of the notes and had noticed that the colour of that note had become faint. After completing the procedure of seizure and preparation of panchanama, he took the accused and muddemal property to the Police Station, where he lodged his report, Exh. 28. The evidence of A.P.I., Shaikh is fully corroborated by P.W. 2 Head Constable Ashok Bhosale and P.W. 3 Pandurang Ghuge. Even though all these witnesses were cross examined at length, they could not be shattered and no material discrepancy has come on record.

10) Evidence of P.W. 6 P.I. Rajendra Joshi reveals that during the relevant period, he was posted as Police Inspector with Crime Branch, Pune city. Investigation of this case was handed over to him. PSI Chaudhari referred the muddemal property of this case to the Government of India, Currency Note Press, Nasik Road along with his covering letter dtd. 11/4/2005, Exh. 32. On 19/4/2005, P.I., Joshi deputed his staff member to

the Government Press, Nasik Road to collect the report and muddemal. He received the same. Exh. 34 is the report received from the Security Press. The report clearly states that the covering letter bearing outward no. 141/2004 dtd. 11/4/2005 from Police Inspector, Crime Branch, Pune was received at the Currency Note Press with 48 notes, one of them was numbered as QBC 802314 and 47 were others. Some of the notes had identical numbers. After examination of the notes, Assistant Works Manager, Incharge of Currency / Bank Note Printing at the Currency Note Press, Nasik Road certified that all these notes are counterfeit notes. This report is admissible in evidence without calling the expert in witness box in view of provisions u/s 292 of Cr.P.C. The reasons for coming to the conclusion that the notes were counterfeit are also given in the report. The report is not in dispute. Though the learned counsel for the accused- appellants vehemently contended that the notes, which were sent to Security Press, were not seized from the accused persons.

11) Mr. Apte, learned counsel for the accused-appellants firstly contended that the report Exh.28 lodged by API, Shaikh cannot be treated as F.I.R. According to him, this was nothing more than the

statement of witness recorded during the investigation. He contended that the information which was received by the Police before proceeding to Parihar Chowk was the real F.I.R., but the said information was not noted down in the Station Diary before proceeding to Parihar Chowk. In support of his contention that the information received by the Police before proceeding to Parihar Chowk and before apprehension of the accused persons was F.I.R. in the real sense, he placed reliance upon **State of Andhra Pradesh Vs. Punati Ramulu and others, AIR 1993 SUPREME COURT 2644, State of Maharashtra Vs. Bittu @ Gurumitsingh s/o Sardar Singh Makan and Ors.** 2006 ALL MR (Cri) **1058**. The record reveals that in both the above referred cases, the offence of murder was committed. In the case of **State of Andhra Pradesh Vs. Punati Ramulu and others**, it was found that before the Investigation Officer had left the Police Station for the spot of incident, oral F.I.R. about the cognizable offence was given to him, but it was not recorded. However, on the basis of that oral information, he proceeded to the spot of incident, which was in different village and there he recorded the statement and treated it as F.I.R. Their Lordships of Supreme Court agreed with the observation of Andhra Pradesh High Court that the

information which was received orally first in point of time at the Police Station and before proceeding to the spot of incident was the F.I.R. because it had revealed the cognizable offence. Their Lordships held that the statement recorded at the spot of incident was only statement u/s 162 Cr.P.C. and could not be treated as F.I.R. within the meaning of Section 154 of Cr.P.C. Almost similar were the facts in the **State of Maharashtra Vs. Bittu @ Gurumitsingh s/o Sardar Singh Makan and Ors**. In that case, one of the eye witness of the incident had orally informed the Police Officer about the attack and murder. On the basis of that information, entry was taken to the Station Diary. Later on the Instigating Officer went to the spot and thereafter recorded the statement of the witness which was treated as F.I.R. The Division Bench of this High Court held that the entry in the Station Diary should have been treated as F.I.R. as it disclosed the commission of cognizable offence.

12) Mr. Apte, learned counsel for the accused-Appellants vehemently contended that in the present case also Police had information that three persons were circulating fake currency notes at Parihar Chowk and therefore that information should have

been recorded and treated as F.I.R. It may be noted that Police machinery has to function on many occasions on the basis of secret information or intelligence received from different sources, which are generally called as Police informers. It may be noted that under Section 125 Evidence Act, no Police Officer can be compelled to disclose the source of information about the commission of any offence. This provision is specifically provided to give protection to the secret informers who provide necessary intelligence which is very essential for the efficient functioning of the Police and for collecting the information to maintain law and order and to prevent the commission of crimes. If such information is treated as F.I.R., naturally name of the informer will have to be disclosed which is against the provisions of 125 of Evidence Act. If names of such Police informers are disclosed, nobody would like to help the Police and take risk to his live. In the result, the sources or the resources of the Police would be tried up and it would be difficult for the Police to get intelligence or information on the basis of which they may maintain law and order and prevent the commission of crime which is very essential for the society. The information which is received from such informers may not be in

detail, it may be cryptic and on the basis of that, the Police have to proceed and find out if the offence is really committed or not and for that purpose, Police lay trap and collect the necessary material. This is the general practice in respect of the offences under the Bombay Prohibition Act, Bombay Prevention of Gambling Act, as well as Suppression of Immoral Traffick Act. Similarly in the case of information about the preparation or assembly of certain persons to commit dacoity punishable under Section 399 and 402 Indian Penal Code also the Police will have to lay traps. Only after getting the concrete material about the commission of offence, the F.I.R. is lodged by some Police Officer. If on every information, which is received by the Police from secret informer, is required to be treated as F.I.R., it may result in registration of many unnecessary cases, where in fact no offence is committed because on a number of occasions the information may be found mere rumour or baseless. In **Shri Cruz Pedro Pacheeo v. State, 1998 Cri. L.J. 4628**, it was held that mere giving information to Police without disclosing how the person had caught fire and who had set on fire would not constitute F.I.R.. In **Mukesh alias Muki Vs. The State, 1995 Cri. L. J. 1769**, it was held that cryptic

information given to Police on telephone could not be termed as F.I.R. In **Somappa Vamanappa Madar and Shankarappa Ravanappa Kaddi vs. State of Mysore, 1979, Supreme Court Cases, (Cri) 910**, it was held that sending information on telephone is not F.I.R.. It is well settled position of law that when a report is lodged with the Police, disclosing the commission of cognizable offence, that report is to be recorded and treated as F.I.R. under Section 154 Cr.P.C. Mere secret information, which may only alert the Police, so that it may takes necessary action to find out whether the cognizable offence is committed or not or to prevent the commission of offence cannot be termed as F.I.R. In view of this, in my opinion the secret information given by some Police informer that some persons were circulating counterfeit currency notes without disclosing the identify of those persons, cannot be treated as F.I.R.

13) Mr. Apte further contended that as per the evidence, the signatures of API Shaikh and the panch witnesses were not obtained on the envelopes in which the notes were put, but only labels bearing signatures of panchas and API Shaikh were affixed on the said envelopes and therefore possibility of tampering the contents of the

envelopes cannot be ruled out. It would be desirable to put signatures on the envelope itself, but at the same time evidence of prosecution witnesses consistently shows that the signatures of API Shaikh and the panch witnesses were obtained on each of the notes seized from the accused persons. This ruled out the possibility of tampering the notes later on.

14) Mr. Apte contended that as per the evidence on record after finding out the notes during the search of accused persons, API Shaikh arranged to call three envelopes from the said area and in view of this it appears that the Police Officer had not been to the spot along with complete material which could be used for sealing. It should be noted that before the Police Officer and staff proceeded to the spot, they were not expected to know what would be quantity of the notes and the material which would be seized. Therefore, they could not go to the spot prepared with the envelopes which would be necessary for such contingency. Naturally after recovery of notes, he instructed his staff members to bring envelopes suitable for keeping the suspected notes. API Shaikh has deposed that he had sealed the packets at the spot. This part of evidence is

supported by the other witnesses as well as by the contents of panchanama. There is no reason to dis-believe them.

15) Mr. Apte also contended that as per the evidence of API Shaikh, he had put water on one note and its colour became faint, but this fact is not mentioned in the panchanama. It is true that this is not mentioned in the panchanama, but this fact is stated in the F.I.R. which was lodged immediately after going to the Police Station. Putting water on the note at the spot of incident was only to prima facie satisfy himself that the notes were really fake. The case is not decided merely on the basis of the test of the note with water at the spot of incident. The sealed packet containing the notes were sent to India Security Press and Expert report has been received that all these notes were counterfeit. Therefore, there is no reason to dis-believe the prosecution evidence that the counterfeit currency notes of denomination of Rs.50/- each were recovered from the possession of accused nos.1 to 3.

16) Mr. Apte vehemently contended that mere possession of counterfeit notes is not sufficient to prove the guilt under Section 489(C) unless the

mens rea required in the said provision is also established. Section 489(C) I.P.C. reads as follows :

> **"489C. Possession of forged or counterfeit currency-notes or bank-notes. - Whoever has in his possession any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."**

From the language of Section, it is clear that to make out or establish the offence under Section 489(C), following ingredients have to be proved.

(1) The accused must be found in possession of forged or counterfeit currency note or bank note;

(2) He should have knowledge or reason the believe that the same was forged or counterfeit;

(3) He should have intention to use the same as genuine or that it may be used as genuine.

Unless all these three ingredients are proved, a person cannot be held guilty for the offence under Section 489(C) Indian Penal Code.

17) Mr. Apte contended that even if it is held that the accused persons were in possession of counterfeit currency notes, still the prosecution has failed to prove that they had necessary mens rea in the sense that they had knowledge or reason to believe that the said notes were counterfeit and that they had intention to use the same as genuine or that they could be used as genuine. In support of his contention , he placed reliance upon **Uma Shankar v/s State of Chattisgarh, (**2001) 9 SCC 642. After referring to the provisions of Section 489(C), their Lordships held that "possessing or intending to use any forged or counterfeit currency / bank notes is not sufficient to make out the case under Section 489(C) in absence of mens rea i.e. the knowledge or reason to believe that the currency notes were forged. In view of the facts of that case, their Lordships held that merely on the basis of the possession of the counterfeit notes, the accused could not be held guilty nor it could be presumed that he had requisite mens rea. In that case, the accused was a student, aged about

18 years and was un-experienced. He was found in possession of 14 fake currency notes. Their Lordships held that merely on the basis of the possession of the counterfeit notes with him, presumption could not be drawn about the requisite mens rea. Mr. Apte also placed reliance upon **Shakil Ahmed Shaikh vs. State of Maharashtra** 2005(2) Mah. L.J. wherein the learned Single Judge of this Court held that on the basis of mere possession of forged counterfeit notes, it cannot be said that accused is guilty u/s 489 unless ingredients of Section 489(C) are also proved. There can be no dispute about this legal proposition.

18) In the present case, API Shaikh investigated the case and recorded statements of some witnesses as stated earlier, as per prosecution during the investigation it was revealed that absconding accused no. 4 Javed and accused no.5 Guru, who was Bihari, were also involved in the commission of this crime. To establish that accused no.1 was fully aware that the notes were counterfeit and he was in possession of the same with intention to circulate the same, the prosecution has placed reliance on the evidence PW 1 Ibrahim and PW 4 Jafar. The evidence of PW 1

Ibrahim reveals that he had sold his flat to accused no. 1 Dilawar for amount of Rs.5,75,000/-, out of which amount of Rs.4,00,000/- was paid by the accused no. 1 initially. Thereafter he paid Rs.67,000/-. An amount of Rs.1,08,000/- was still to be paid by accused- Dilawar to him, out of the consideration amount. He also deposed that he was acquainted with PW 4 Jafar and used to go to his garage. According to him, accused no. 1 Dilawar also used to come there. There PW 4 Jafar introduced him to one Javed. As Ibrahim, PW 1 was in need of amount of Rs.8,000/- to 10,000/- , he requested PW 4 Jafar to arrange for the same and for this purpose, they contacted Javed, who asked them to come to Camp area. Javed expressed his difficulty to provide loan, however, he informed that one person namely Guru used to provide counterfeit notes. Accordingly Javed called one Guru who showed one counterfeit note of Rs.50/- and said that for amount of Rs.50/- he would give notes of Rs.100/-. A few days after that, accused no. 1 Dilawar approached PW 1 Ibrahim and requested him to go to Pune. Accordingly PW 1 Ibrahim and PW 4 Jafar went near Naz Hotel, Pune. There accused no.1 Dilawar told Javed that he was having amount of Rs.12,500/-. After that said Javed called Guru and informed that the money was with him and he

asked Guru to come with material. After that said Guru came with a carry bag containing bundles of notes. Javed had collected amount of Rs.12,500/- from accused no. 1 Dilawar and handed over the bundles containing notes brought by Guru to accused no.1. He further deposed that after a few days, accused no. 1 Dilawar had given amount of Rs.3,000/- to him in counterfeit notes, but he returned the notes of Rs.2,500/- to him and retained 10 notes of denomination of Rs.50/- each. According to him, he did not have daring to use the said notes and therefore on the next day, he destroyed the same.

19) PW 4 Jafar provided some corroboration to the testimony of PW 1 Ibrahim and he also deposed that during the talk at Supriya Hotel, accused no. 1 Dilawar had told that he was ready to circulate the currency notes. These witnesses were cross examined at length, but they could not be shattered. Mr. Apte, learned counsel for the accused- appellants contended that PW 1 Ibrahim is in position of an accomplice and he cannot be relied upon. PW 1 Ibrahim admitted that the counterfeit notes of Rs.3,000/- were given to him by accused no. 1, but he retained only 10 notes, but because he did not have daring to circulate the

same, he finally destroyed the same. There is nothing on record that any such counterfeit notes were recovered from him. If he had come in possession of the same and destroyed the same because he did not want to circulate the same, he could not be held guilty of offence u/s 489 (C) IPC.

20) Taking into consideration the evidence of PW 1 Ibrahim and PW 4 Jafar, there is clinching evidence to prove that accused no. 1 Dilawar was very much in the nefarious business of circulation of fake currency notes in the market. It appears that the notes were supplied to him by the two absconding accused persons namely Javed and Guru. Therefore, it must be held that not only, he had the knowledge that the notes with him were counterfeit currency notes, but he had also the intention to use the same as genuine in the market. In the circumstances in which accused nos. 2 and 3 were found along with accused no. 1 at the market place and with the counterfeit notes, an inference can be drawn that notes must have been supplied to them by accused no. 1 or may be by the absconding accused for the purpose of using the same as genuine. It is material to note that when the opportunity was given to accused to explain the

possession of the counterfeit notes, none of them offered any explanation. Accused persons certainly did not give any explanation on the basis of which it could be said that they were in possession of the said counterfeit notes without knowledge that the same were counterfeit and that the intention was not to use the same as genuine. Taking into consideration the evidence on record, I find that all the ingredients of the offence under Section 489 (C) IPC are proved in respect of each of the above three accused persons and the trial Court had rightly convicted them for the said offence.

21) The learned trial Court awarded the sentence of R.I. for three years and fine of Rs.100/- each to the accused. Taking into consideration, the small quantity of the currency notes found in possession of accused nos. 1 to 3, I find that the sentence is on the higher side. It may be noted that accused no. 1 Dilawar was in custody before the trial commenced from 1st March 2005 to 3rd October 2005 i.e. for 7 months and 3 days and on 31st March 2006 he was again taken into custody and since then he is in custody. Accused no. 2 Mahesh was in custody before the trial from 1st March 2005 to 4th August 2005 and again he is in custody from 31st March 2006. Accused no. 3

Mahendra was in custody from 1st March 2005 to 18th August 2005, prior to the trial and again he is in custody from 31st March 2006 i.e. the date of conviction. I find that accused no. 1 has actually undergone sentence of 21 months and 10 days, accused no. 2 has actually undergone sentence of 19 months and 11 days and accused no. 3 has undergone sentence of 19 months and 25 days. In my opinion, the sentence as already undergone by them is sufficient to meet the ends of justice. Therefore, in my opinion, the appeals may be allowed to the extent of the sentence.

22) The appeals are partly allowed. While the conviction of accused nos. 1 to 3 / appellants in these three appeals for the offence punishable under Section 489 (C) r/w 34 Indian Penal Code is maintained, the sentence is reduced to the R.I. as already undergone and if they are not required in any case, they be released forthwith.

(J.H. BHATIA, J.)